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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1348

MARY ANN GUSTIN, *Petitioner*

v.

RONALD D. STEGALL and FRANK HOWARD, Administrator, Estate of Ann C. Howard, Deceased, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

D. HEYWOOD HARDY
1841 Columbia Road, N.W.
Washington, D. C. 20009
Attorney for Petitioner

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BLEED THROUGH

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Petitioner prays that a writ of certiorari issue to review the judgment of the District of Columbia Court of Appeals, entered in the above entitled case on November 11, 1975, rehearing denied December 19, 1975.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals entered on November 11, 1975, printed in the Appendix, *infra* p. 1a, is reported in 347 A.2d 917. The opinion of the Superior Court of the District of Columbia, printed in the Appendix, *infra* p. 15a, is unreported. The order of the Court of Appeals denying the Petition for Rehearing, printed in the Appendix, *infra* p. 35a, is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on Novembre 11, 1975. A timely Petition for Rehearing was denied on December 19, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. May a court of appeals refuse to decide a point of law determinative of defendant's property rights based on defendant's refusal to acknowledge the validity of a sales contract which defendant contested in the case below based on fraud, and thereby deny defendant her due process rights under the Fourteenth Amendment of the Constitution of the United States?
2. May a court of appeals affirm a judgment of a trial court in favor of the plaintiff in an equity proceeding where:
   (a) A contract for the sale of real property which the plaintiff sought to have specifically enforced was acknowledged by the trial judge to have been fraudulently signed;
   (b) This same contract was not signed at the end thereof, after certain modifications;
   (c) The record contains substantial evidence with respect to such defense;
   (d) The court of appeals has not stated any findings of fact or conclusions of law with respect to the contract not being signed at its natural ending?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment XIV, Section 1 to the Constitution of the United States of America:

> No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; *nor shall any state deprive any per-*

son of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

District of Columbia Code Annot. § 45-401 (1973):

No Deeds of conveyance of either real or personal estate by individuals shall be executed or acknowledged by attorney.

STATEMENT OF THE CASE

Petitioner Mary Ann Gustin and her mother, Ann C. Howard, now deceased, owned legal title to property located at 712 East Capitol Street, N.E., Washington, D. C., as joint tenants with rights of survivorship.

It was well known to all parties that the beneficial owner of this property was Paul Gustin, Mrs. Gustin's son. Paul Gustin supplied all of the funds for the down payment and legal title was placed in the names of Mrs. Gustin, the Guardian of Paul's estate and Mrs. Howard, his grandmother, for managerial reasons only. Paul Gustin was awarded Twenty-Six Thousand Dollars ($26,000.00) at age 6 by an Act of Congress, as compensation for negligent acts of the United States Government which caused the loss of his arm, foot, and massive internal injuries. The Congressional intent was to have this money invested so Paul would have a source of revenue to cover his medical costs over his lifetime.

On or about February 11, 1973, Ann C. Howard, who was acting as the real estate manager for this and three other properties purchased with Paul's funds and for his benefit, signed a sales contract with Ronald P. Stegall. Ann C. Howard also fraudulently signed the name of Mary Gustin to this contract. It was later discovered that Ann C. Howard, working with the Robert Wenz Real Estate, Inc., either sold or attempted to sell all of Paul Gustin's property. This was done without the knowledge or consent of either Paul Gustin or Mary Gustin.

On property located at 14 Ninth Street, S.E., Washington, D. C., Ann C. Howard, with the assistance of Robert Wenz, fraudulently signed "Mary Gustin," who was sole owner of the property, to a deed transferring the property to a bona fide purchaser. Ann C. Howard and Robert Wenz arranged these fraudulent and fast sales at approximately half of the fair market value of the properties. All proceeds from these illegal sales have gone to Ann C. Howard, who died shortly after the discovery of her fraudulent actions, and her husband, Frank Howard, the Administrator of her estate.

The trial court found as an undisputed fact that the signature affixed to the sales contract from Ann C. Howard to Ronald D. Stegall was not signed by Mary Gustin, but rather was forged by Ann C. Howard.

The trial court awarded the property to Stegall, finding that Mary Gustin had given Ann Howard apparent authority to convey the property, and that Stegall should be awarded the property under the equitable remedy of specific performance, since he had clean hands, detrimentally had relied on the contract, and was a bona fide purchaser for value.

The trial court based its conclusion that Mary Gustin had given Ann Howard apparent authority to convey her property on the fact that 1) Ann Howard had fraudulently opened a checking account in Mary Gustin's name, and 2) that Ann Howard had fraudulently signed Mary Gustin's name to a contract to convey certain other property in 1972, and thus Mrs. Gustin knew or should have known that Mrs. Howard was acting as her agent, and thus was given apparent authority to act in regard to the property in this case.

The Court of Appeals affirmed in part and reversed in part, upholding the decision to convey the property to Stegall under the contract as stated above, but awarded Mary Gustin one-half of the proceeds of the sale based on

the joint tenancy ownership of the property by Mary Gustin and the now-deceased Ann Howard.

A question of law regarding whether a surviving joint tenant, after a contract of sale is entitled to all proceeds upon settlement was left unresolved. The reason given by the court for not deciding this question was that but for Mary Gustin's refusal to acknowledge the validity of the sales contract, the deed would have been delivered within Mrs. Howard's lifetime, and thus the proceeds would have been held in common.

It is this rationale which acted to deny Mrs. Gustin her property in violation of her due process rights under the Fourteenth Amendment, and the court's upholding of the trial court's erroneous award of the property to Mr. Stegall under the doctrine of specific performance upon which we base appeal for writ of certiorari.

REASONS FOR GRANTING THE WRIT

Because Petitioner refused to abide by the terms of what she knew to be an incomplete, fraudulently signed, and illegal contract she is being penalized by the Court of Appeals for exercising her rights guaranteed under the Constitution of the United States, Amendment XIV, Section 1:

> No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; *nor shall any state deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws.

The Court of Appeals refused to decide a very important issue of law that should have been decided in favor of Petitioner based on the decisions of the great majority of the courts who have passed on this particular issue. The reason given by the Court of Appeals for not deciding this

issue is because of Petitioner's refusal to acknowledge the validity of this sales contract. The Court of Appeals states:

> Had it not been for this refusal, delivery of the deed would have occurred in the lifetime of her mother, Mrs. Howard. *Infra* p. 13a.

The death of Ann C. Howard by natural causes was an act of God. For the Appeals Court to assert that Petitioner should have meekly accepted what she knew to be a criminal act committed against her and her son's pecuniary interests is opposed to basic guaranteed rights. To be penalized for insisting on having a disputed matter litigated by a court of law places a "chilling effect" on one's rights guaranteed by Amendment XIV, Section 1 of the Constitution.

The point of law that this Court did not decide is the issue of whether, under a joint tenancy with the right of survivorship between the parties, if one joint tenant enters into an executory agreement offering to sell his portion of the realty and dies before the severance, who should receive the purchase money realized from the subsequent conveyance, the surviving joint tenant or the heirs of the deceased joint tenant's estate.

In the Illinois Supreme Court case, *Watson* v. *Watson*, 5 Ill.2d 526, 126 N.E.2d 220 (1955), the court decided that "joint tenants who entered into a contract to sell property conditioned upon certain payments to be made by the buyer, the doctrine of equitable conversion has no application to divest the surviving joint tenant of her rights, as survivor, to the proceeds paid under the contract."

Although this Court has not decided the question of whether the rights of survivorship between joint tenants are extinguished by the execution of a false contract many jurisdictions have decided the question and each has ruled in favor of the surviving joint tenant.

The United States Court of Appeals for the District of Columbia Circuit in the case *Cobb* v. *Gilmer*, 365 F.2d 931 (1966), dealt specifically with the issue of a joint tenant's rights in survivorship. Chief Judge Bazelon concluded that

> the universal rule in this country is that a pending suit for a partition of a joint tenancy does not survive the death of one of the tenants. This rule is compelled by two related concepts: first, the theory of survivorship, that at the moment of death title to the property rests exclusively in the surviving joint tenant; and second, the doctrine that severance of the joint tenancy does not occur until the suit for partition reaches final judgment. Therefore, unless partition has been decreed before the death of the joint tenant, no interest in the property remains in the representatives of the decedent which can support an action for partition. Moreover, if the ability to demand partition survived the death of a joint tenant, his representative could always bring an action for partition, thereby destroying the concept of survivorship which is the essence of the tenancy.

The Pennsylvania Superior Court held in the case *Sheridan* v. *Lucey*, 395 Pa. 306, 149 A.2d 444 (1959), that "the commencement of an action of partition does not work a severance of a joint tenancy with the right of survivorship into a tenancy in common. Where a person who is a joint tenant with right of survivorship institutes an action to partition the property and thereafter dies before judgment has been entered by the court, the surviving joint tenant becomes sole owner of the property." The Court of Appeals ignored every principle of a joint tenancy in survivorship by first ordering that the sales contract be specifically enforced (which is tantamount to partition *after* the death of a joint tenant) and then acting consistent with this decision by ordering that the estate share the proceeds of the sale. This is contrary to all of the established law regarding a joint tenancy and has created an ongoing hardship on the Petitioner and her son.

In the case *Ellison* v. *Murphy*, 128 Misc. 471, 219 N.Y.S. 667 (1927), J. Rhodes concluded in this New York Supreme Court decision the following:

> The complaint demanded, not only a partition of the property, but an accounting by the defendant, alleging that said defendant had received rents and income from the property. The interest of the parties, being that of joint tenancy, could have been severed by conveyance by either party of his interest or by a judgment of partition. Until such severance the rights of the parties remained unchanged, including the right of survivorship. Had the plaintiff placed his interest in the hands of a real estate broker for sale, clearly this would not have amounted to a severance, until he had actually conveyed such interest. The commencement of the action in partition did not accomplish a severance of the interests of the parties, and, one of the joint tenants having died before such severance, the entire title upon his death is vested in the survivor.

The Supreme Court of Iowa dealt with the problem of severance in the case *Fleming* v. *Fleming*, 194 Iowa 71, 184 N.W. 296 (1919):

> While the tenants are considered as one person, and the estate joint, yet each of the tenants has a moiety interest. Or, in other words, while each joint tenant is regarded as having the whole of the estate, his interest in the estate may be put to an end or severed during his life. Each joint tenant, during his life, may dispose of his share by the usual modes of disposition, the title to the thing which is the subject of the joint tenancy remains in the survivor or survivors, free from the share or moiety of the one who dies.

The District Court of Appeals, First District, of California in the case *Dando* v. *Dando*, 99 P.2d 561 (1940) held:

> The executor of the estate of a wife, who died before trial of her action for partition of land owned by her and her husband as joint tenants, was not entitled to judgment therein, as husband became sole owner of

> entirety by survivorship on wife's death. The mere fact that one joint tenant files action in partition does not work severance of tenancy. Upon hearing the respective parties, and when it transpired that the plaintiff had died before trial, it is patent there was nothing left to partition. This is so because upon the wife's death the husband became the sole owner of the entirety by survivorship and in virtue of the original grant creating the tenancy. That was the common-law rule and it obtains in this state (California) except as modified by statute.

The Supreme Court of Kansas held in the case of *Hewett* v. *Biege*, 183 Kan. 352, 327 P.2d 872 (1958):

> When the Bieges entered into an executory contract to sell and convey the land, they were owners of the legal title to the real estate, subject to the escrow contract for the sale thereof, as joint tenants and not as tenants in common, and at the death of Pearl, the defendant, as surviving joint tenant became the sole owner of the legal title to the real estate and all rights under the escrow contract for the sale thereof.

The Supreme Court of Nebraska in the case *Stiff* v. *Stiff*, 184 Neb. 432, 168 N.W.2d 273 (1969), held that "the filing of the suit in partition does not destroy the joint tenancy; only the judgment or decree has that effect, and the death of one joint tenant leaves nothing to partition. It is the rule of this jurisdiction that a survivorship attached to a tenancy in common is indestructible except by the voluntary action of all the tenants in common to do so."

The undersigned counsel could find no cases to support the position of the heirs of the estate receiving the proceeds of the sale. Because it would be unjust and inequitable to penalize the Petitioner for exercising her rights guaranteed under the Constitution of the United States we feel this Honorable Court should decide the issue of whether the proceeds of a sale should go to the surviving joint tenant or to the decedent's estate. This

issue should be decided only on the existing facts and the Appeals Court should not have speculated on what might have happened if Ann C. Howard had lived.

The trial court reasoned that because Ann C. Howard fraudulently maintained a checking account in the name of Mary Gustin, and fraudulently signed Mary Gustin's name to a contract for purchase of real estate in 1963, Petitioner had vested her mother with apparent authority sufficient to fraudulently sign her name to a sales contract attempting to transfer the real property in issue here. That the signature on the contract in question was not Mary Gustin's was acknowledged by the trial court as follows:

> I will find as a fact—it being undisputed—that the signature of Mary Gustin on that contract is not, in fact, the genuine signature of Mary Gustin, rather that the signature was signed to that document by her mother, Ann C. Howard, and the first issue presented to this Court is whether or not, by virtue of apparent authority, estoppel, detrimental reliance or other similar equitable principles, Mary Gustin is bound by her mother having signed her signature to that contract. *Infra* p. 17a.

For the court to conclude that Petitioner had vested Ann C. Howard with apparent authority sufficient to specifically enforce this fraudulently signed contract is erroneous and contrary to the law and evidence. Ann C. Howard did not sign this contract as Petitioner's agent but instead attempted to duplicate the actual signature of Mary Gustin. The Court should have followed the established law of *Lipscomb* v. *Watrons*, 3 App. D.C. 1 (1894), in which the court held that one of two tenants in common or joint tenants possesses no authority to sell or bind the interest of his co-owner, in the absence of express authority for that purpose.

Petitioner's signature was not included, forged or otherwise, beneath the paragraph changing and contradicting

the terms of this sales contract. Specific performance will not be decreed unless the agreement sought to be enforced and all its terms are clearly proved. *Lipscomb* v. *Watrons*, 3 App. D.C. 1 (1894). The court erred when it ruled that this fraudulently signed and incomplete contract be specifically enforced.

The agency relationship between Ann C. Howard and Petitioner was specific and well-established over an extended period of time. She was authorized to collect rents, make payments to mortgages and taxes, pay utility and maintenance bills and carry on the duties of a real estate agent. It is well settled under agency law principles that the extent of implied authority is limited to acts of a like kind and that an implied power is never extended by construction beyond the obvious purpose for which it is granted. *Gregory* v. *Loose*, 19 Wash. 599, 54 P. 33 (1898).

Petitioner never ratified Ann C. Howard's past fraudulent actions and has been working constantly to undo the damage created by them. This Court has maintained that power to convey land must possess the same requisites, and observe the same solemnities, as are necessary in a deed directly conveying the lands. *Clark* v. *Graham*, 19 U.S. 577 (1821). A title to lands can only be acquired and lost according to the laws of the state in which they are situated. An agent cannot bind his principal by deed, unless he has authority by deed to do so. The only exception to the rule that the authority to execute a deed must be by deed, is where the agent or attorney affixes the seal of the principal in his presence and by his direction. *Clark* v. *Graham*, 19 U.S. 577 (1821).

The power to sell real property within the District of Columbia is controlled by *District of Columbia Code Annot.* § 45-401 as follows:

> No Deeds of conveyance of either real or personal estate by individuals shall be executed or acknowledged by attorney.

The Court of Appeals erred when it failed to give notice to or acknowledge a decision of this Court exactly in point as well as circumventing this provision of the District of Columbia Code.

Robert Wenz, the District of Columbia professional real estate agent who joined with Ann C. Howard and her husband Frank Howard to fraudulently sign sales contracts and deeds to properties owned legally by Mary Gustin and beneficially by Paul Gustin, knew, or should have known that a fraudulently signed contract or deed was a violation of the law of the District of Columbia. The testimony of Mr. Wenz in the trial court that he allowed Ann C. Howard to fraudulently sign the name of Petitioner to these documents was based on a conversation that allegedly took place four or five years previous to the fraudulent signings. Mr. Wenz testified that he was then working as a sales agent for the Beau Bogan Realty Company and was told by Petitioner that Ann C. Howard had the power to handle all of her dealings. Petitioner has denied ever having seen Mr. Wenz until the day of Ann C. Howard's funeral. These denials were made under oath while testifying in the trial court and sworn to by Affidavit before District of Columbia Notary Publics. Based on this alleged conversation, Mr. Wenz saw fit to be a part of four fraudulently signed documents conveying or attempting to convey property belonging to Petitioner and her son.

Petitioner lived within a fifteen (15) minute drive of Ann C. Howard and Mr. Wenz could easily have had her sign her own signature if he honestly thought she desired to sell them. Petitioner's name was listed in the Oxon Hill, Maryland telephone directory and Mr. Wenz, at the very least, should have called Petitioner to reassure himself after a four or five year period that Petitioner still desired to have Ann C. Howard "handle all of her affairs" before allowing hundreds of thousands of dollars to be fraudulently transferred. It is much more likely that Robert

Wenz never for a moment thought Petitioner would be willing to sell her property (especially at a price that was approximately half the fair market value) and that he acted in consort with his friend Frank Howard and Ann C. Howard to perpetrate this fraud.

It was unreasonable for the trial court to believe that a professional real estate agent would chose not to have authentic signatures affixed to sales contracts (and deeds) when it would have been so easy to arrange because of the close proximity of all of the parties. It should also be noted that Mr. Wenz never mentioned the fact that the signatures of "Mary Gustin" had in fact been fraudulently signed by Ann C. Howard to the purchasers of the properties.

An exercise of this Court's power of supervision is called for because the Court of Appeals has refused to consider the established law of this Court and the statutory provisions of the District of Columbia Code.

When the Court of Appeals refused to decide the issue of whether the proceeds from the sale of real property held in joint tenancy with right of survival, because Petitioner refused to honor what was in fact a fraudulently signed and incomplete contract, the court penalized Petitioner for exercising rights guaranteed by the Constitution of the United States.

By refusing to decide this issue, the Court of Appeals has actually made a decision which has caused the loss of Petitioner's (and her son's) interest in this unique real property.

Although this issue has not been considered by either this Court or the Court of Appeals, the "silent order" of the Court of Appeals has been made contrary to the established law of every jurisdiction ruling on the matter.

The Court of Appeals arrived at their decision by completely ignoring this Court's decision in *Clark* v. *Graham*,

19 U.S. 577 (1821), *supra* p. 11 of this brief, and unjustifiably circumventing the *District of Columbia Code Statute 45-401, supra* p. 11 of this brief.

After ignoring or circumventing all applicable law the Court of Appeals upheld a decision enforcing a fraudulently signed and incomplete contract.

This inequitable decision is now having repercussions in other courts relating to this and other fraudulent transactions perpetrated by the same parties to the great detriment of the Petitioner and her son. I quote from page 5 of the *Answer* filed by defendant in the *Gustin* v. *Hash* case, Civil Action No. 75-1814 now before the United States District Court for the District of Columbia. Ann C. Howard actually signed the name of Mary Gustin, sole record owner of the real property involved, to a deed purporting to transfer the property to an innocent purchaser.

> Plaintiff is estopped by the judgment in *Gustin* v. *Stegall*, Appeal No. 9161, in the District of Columbia Court of Appeals and by Findings of Facts and Conclusions of Law of Judge Newman in *Stegall* v. *Howard*, Civil Action No. 1418-75-RP in the Superior Court of the District of Columbia from denying that she authorized her mother, Ann C. Howard, to act for her as agent in the execution of legal papers pertaining to real property and the receipt of funds therefor.

It is essential that this Court exercise its power of supervision to halt this continuing saga of inequity and help bring justice to the Petitioner and her handicapped son. By so doing, this Court will finalize an issue of law that has not been heretofore decided beyond the State level, it will undo the violation to the Petitioner's United States Constitutional rights, it will acknowledge the law established by this Court in direct point to this case previously ignored by the Court of Appeals and the statutory law of the District of Columbia unjustifiably circumvented by the Court of Appeals, and it will fulfill the Congressional in-

tent of the 85th Congress that Paul Gustin have a supply of funds to endure the continuing hardships inflicted on him by the United States Government.

CONCLUSION

It is respectfully submitted that for the foregoing reasons this petition for a writ of certiorari should be granted to review the judgment of the District of Columbia Court of Appeals.

Respectfully submitted,

D. Heywood Hardy
1841 Columbia Road, N.W.
Washington, D. C. 20009
Attorney for Petitioner